IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:07.09.2007

CORAM:

THE HON'BLE MR. JUSTICE P.JYOTHIMANI

WRIT PETITION NOS.18520 TO 18522 OF 1999

Y. Chellammal .. Petitioner in WP.18520/99
M. Mary Rajammal .. Petitioner in WP.18521/99
R. Seeniammal .. Petitioner in WP.18522/99

Vs.

1. State of Tamil Nadu rep. by
its Secretary, School
Education Department,
Secretariat, Chennai 9.

2. Deputy Director
Audit Department
Tirunelveli 627 002.

3. Additional Assistant Educational
Officer, Keelapavoor Range
Pavoorchatram
Tirunelveli District.

4. District Elementary Educational
Officer, Tirunelveli 627 002.

5. Director of Elementary Education
College Road, Chennai 6.

6. Correspondent, T.D.T.A. Middle
School, Rajagopalaperi-
Bungalow Surandai Postrate
Veerakeralampudur Taluk 627 861
Tirunelveli District. .. Respondents in WP.18520/99

1.State of Tamil Nadu rep. By
its Secretary, School
Education Department,
Secretariat, Chennai 9.

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2. Deputy Director
   Audit Department
   Samathanapuram,
   Tirunelveli 627 002.

3. Assistant Educational Officer,
   Tenkasi Range, Tenkasi - 627 811
   Tirunelveli District.

4. District Elementary Educational
   Officer, Tirunelveli 627 001.

5. Director of Elementary Education
   College Road, Chennai 6.

6. Correspondent, C.M.S. Mecwittar
   Middle School, Tenkasi. .. Respondents in WP.18521/99

1. State of Tamil Nadu rep. by
   its Secretary, School
   Education Department,
   Secretariat, Chennai 9.

2. Accounts Officer (Audit)
   School Education Department
   Madurai 625 002.

3. District Educational Officer,
   Tenkasi 627 811
   Tirunelveli District.

4. Director of School Education
   College Road, Chennai 6.

5. Manager and Correspondent
   Rukkumani High School
   Mangalapuram
   Kadayanallur
   Tenkasi Taluk 627 751
   Tirunelveli District. .. Respondents in WP.18522/99

Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari as stated therein.

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For petitioners : Mr. R. Saseetharan

For respondents : Mr. M.R. Jothimanian
Government Advocate (W)for R.1&2

Mr.A.C. Manibarathi
Government Advocate (E) for R3to5

..

COMMON ORDER

The common issue involved in all these cases relate to the orders passed by the third respondent, Assistant Educational Officer, Tenkasi Range, Tenkasi, Tirunelveli District in directing the 6th and 5th respondent Schools respectively in these writ petitions, to recover from the salary of the petitioners the amounts stated to have been paid in excess by wrongly fixing the selection grade and special grade to them.

2. The petitioner in W.P.No.18520 of 1999 was appointed in the year 1980 as a full-time Pre-vocational Instructor (Craft Teacher) in T.D.T.A. Middle School, Rajagopalaperi-Bungalow Surandai Postrate, Veerakeralampudur, Tirunelveli District, 6th respondent in the writ petition. The said school is an aided institution. On the representation of the said Craft Teacher to raise her salary on par with her counterparts in the High Schools since the job was similar in nature, One Man Committee was constituted by the Government which has made its recommendations. Based on the same, the Government has passed G.O.Ms.No.1366, Education Department, dated 5.9.1986 and has ordered the salary of Craft Teachers be raised on par with their counterparts in High Schools subject to the condition that they should qualify S.S.L.C. within a period of three years from the date of issue of the said order. The petitioner has completed her S.S.L.C. on 1.5.1988 within the time stipulated in the Government Order. By a subsequent G.O.Ms.No.1105, Education Department, dated 22.8.1989, the Government has made the Craft Teachers working in various schools like that of the petitioner, be eligible to be granted selection grade and special grade of pay notionally with effect from 1.10.1984, however, with monetary benefits from 1.4.1986. It was based on that, the petitioner was accorded selection grade with effect from 4.6.1990, on completion of 10 years of her service. However, on the basis of the objection raised by the Audit Department namely, the second respondent, the third respondent by the impugned letter dated 3.4.1999, has informed the petitioner through the 6th respondent that she was granted higher scale of pay by mistake and ordered to recover the said amount. Presumably, the said order was passed by the third respondent on the basis that the petitioner who had completed

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S.S.L.C. on 1.5.1988 should have been granted selection from that date onwards.

3. Likewise, in W.P.No.18521 of 1999, the petitioner was appointed in the year 1973 as a Full-time Pre-vocational Craft Teacher in C.M.S. Mecwittar Middle School, Tenkasi, 6th respondent in the writ petition and the said School is an aided Institution. Based on the said Government Orders stated above, the petitioner has completed her SSLC during March, 1989, which is well within the time stipulated in the Government Order. The salary was also raised as per the said Government Order. The petitioner was accorded Selection Grade with effect from 12.11.1983, viz., 10 years after completion of her service from her date of original appointment. Subsequently, she was also accorded special grade with effect from 12.11.1993 with increase in the salary. The third respondent on the basis of the objection from the second respondent has informed through the sixth respondent that the petitioner's salary was wrongly fixed and directed to recover under the impugned order dated 23.3.1999.

4. Similarly, in W.P.No.18522 of 1999, the petitioner was appointed as a Full-time Vocational Instructor (Craft Teacher) in Rukkumani High School, Mangalapuram, Kadayanallur, Tenkasi taluk in the year 1980, viz., the 5th respondent. The 5th respondent school is an aided institution. The petitioner has completed her SSLC in April, 1985, well within the time stipulated in the said Government Order and the salary was also increased accordingly. She was accorded selection grade with effect from 22.8.1989, ten years after completion of her entry into the services with the 5th respondent. While so, the 2nd respondent, Accounts Officer (Audit), School Education Department, by impugned letter dated 16.3.1998, has directed recovery of the amount on the basis that there has been wrong fixation of pay.

5. The respective impugned orders are challenged in all the writ petitions on the basis that the G.O.Ms.No.1366, Education Department, dated 5.9.1986 and G.O.Ms.No.1105, Education Department, dated 22.8.1989 do not stipulate the requirement of educational qualification, viz., SSLC as a condition precedent for calculating the selection grade. It is the case of the petitioners that the said Government Orders grant three year period to those Craft Teachers like that of the petitioners, who have entered into service with lesser qualifications, to pass SSLC within a period of three years which the petitioners have complied with. Further, under G.O.Ms.No.1105, Education Department, dated 22.8.1989, Selection Grade and Special Grade have been given to the Craft Teachers subject to the condition that they should qualify in passing SSLC. Therefore, it is the case of the petitioners that the fixation of pay made earlier was

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in accordance with law and therefore, the impugned orders are not valid. It is also alleged that such benefits having been given for so many years are sought to be withdrawn and recovery sought to be made without any notice and therefore, it affects the principles of natural justice.

6. The 4th respondent in W.P.No.18521 of 1999, viz., the District Elementary Educational Officer, Tirunelveli has filed a counter affidavit. The fact of appointment of the petitioners is not denied. It is the case of the 4th respondent that under G.O.Ms.No.1366, Education Department, dated 5.9.1986, the minimum general qualification for the post of Craft Teachers working in the Middle Schools is made as SSLC pass in order to allow higher scale of pay on par with Secondary Grade Teachers in the High Schools and therefore, it is only after possessing the qualification, they are made eligible for the higher pay scale. It is also the case of the 4th respondent that subsequent G.O.Ms.No.1105, Education Department, dated 22.8.1989 which confers selection grade and special grade is also related to the qualified Craft Teachers of the Middle School by giving notional benefits and inasmuch as the petitioners have completed SSLC much afterwards, the Secondary Grade Ordinary scale of pay should have been effected only from the date of acquisition of SSLC qualification. However, by mistake, Secondary Grade scale of pay has been awarded before completion of ten years of qualifying service with SSLC qualification and it was a wrong conferment of benefits given to the petitioners, which is now sought to be rectified. The selection grade should have been granted only 10 years after the date when the petitioners have completed SSLC and the special grade 10 years after the selection grade. Therefore, according to the 4th respondent, the impugned orders are perfectly valid in law.

7. It is not in dispute that the Government, in order to equate the Craft Teachers in Middle Schools in respect of their salary on par with their counterparts in High Schools, has prescribed minimum general qualification for the post as SSLC by G.O.Ms.No.1366, Education Department, dated 5.9.1986. In the said Government Order, it is also made clear that in respect of Craft Teachers who are already in service in Middle Schools with lesser qualification, viz., 8th Standard and 7th Standard, they shall be allowed to acquire the minimum qualification within a period of three years.

8. It is also not in dispute that all these three petitioners have acquired their SSLC within the time stipulated in the said Government Order. By subsequent G.O.Ms.No.1105, Education Department, dated 22.8.1989, while granting selection grade and special grade to Middle School Teachers, relevant

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scales of pay have been fixed to all Craft Teachers of High Schools working in all kinds of Management, subject to the condition that they should qualify themselves with SSLC. It is also stated that the selection grade and special grade pay shall take notional effect from 1.10.1984 for the purpose of fixation of pay in those scales with monetary benefits from 1.4.1986. Under a similar circumstance, when a Craft Teacher was appointed in the year 1970 and he was qualified with SSLC on 5.4.1986 and representation was made to the authorities to confer the benefits of selection grade as per the said G.O.Ms.No.1105, Education Department, dated 22.8.1989 and also G.O.Ms.No.1366, Education Department, dated 5.9.1986 and the same was rejected on 22.11.1990, when that was challenged in the Tamil Nadu State Administrative Tribunal by filing Original Application, the Tribunal has allowed the application and directed the authorities to give selection grade notionally with effect from 1.10.1984, however, with monetary benefits from 1.4.1986. When the Government has challenged the said order of the Tribunal, in the case of District Educational Officer, Tiruvannamalai and others v. K.T.Margasakayam, a Division Bench of this Court consisting of V.S.Sirpurkar,J. (as he then was) and V.Kanagaraj,J. by order dated 27.7.2001 passed in W.P.No.12066 of 1999, while confirming the said order of the Tribunal has held as follows:

> "The learned counsel appearing on behalf of the Government attacked this order on the ground that in fact when the relevant Government Orders came on the field the respondent was not covered by them. It was tried to be argued that the respondent after his initial appointment was transferred to Polur Panchayat Union middle school which school was upgraded into a high school and at that time, the respondent had not even passed the S.S.L.C. examination and had only passed the 8th standard examination. It was conceded that the respondent has passed the SSLC examination on 5.4.1986 and had qualified himself for drawing the pay scale of Rs.610-20-730-25-955-30-1075 which was intended for the post high school craft teachers. What was forcefully argued before us was that the respondent teacher could not have asked for counting his middle school services for selection grade as that service was on the lower pay scale. It was tried to be argued that after the said teacher was granted higher pay scale, if he continued for ten years on that pay scale then alone, he was entitled to the selection grade. In fact, this argument was made before the Tribunal also and the Tribunal has refuted this argument and, in our opinion, correctly. What will be seen from G.O.Ms.No.1105, dated 22.6.1989 is that the craft teachers in the middle schools were made eligible for the selection

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grade and special grade scales of pay on par with the craft teachers of the high school. However, in that Government Order, there was no condition imposed that this advantage was to be given only on completion of the ten years of service only as a high school craft teacher. The learned counsel also relied on the Government letter dated 4.10.1990 to suggest that the services rendered in the posts carrying equal and higher scales of pay alone could be taken into account for his grant of selection grade or special grade in case of the respondent, since he was working as middle school craft teacher that service could not be taken into account for the purpose of awarding selection grade. The Tribunal has refuted this argument on the basis of the contents of paragraph-2 of G.O.Ms.No.1366, dated 5.9.1986 as also the other G.O.Ms.No.1105, dated 22.8.1989. We are in complete agreement with the Tribunal on the interpretation of the relevant Government Orders in question. The Tribunal has also taken the example of the Headmaster of the primary schools and has drawn parallel. In our opinion, the language of the concerned Government Orders is clear enough to suggest that the concerned respondent was undoubtedly entitled to the selection grade on account of his services right from 1970 as middle school craft teacher and thereafter, his services as High School craft teacher for which he had also acquired a proper qualification, i.e., SSLC in the year 1986. In our opinion, there is no necessity to interfere with the order of the Tribunal in which the findings are recorded in a proper manner."(Emphasis supplied)

9. Following the above cited Division Bench judgement, similar orders have been passed by this Court in P.Rajendran v. The District Elementary Educational Officer, Tirunelveli & others in W.P.No.42763 of 2002 dated 3.12.2002 and subsequently in S.Arputha Amala Ritabai v. The Director of Elementary Education, College Road, Chennai-6 in W.P.No.29235 of 2004 dated 5.11.2004.

10. In the case in W.P.No.29235 of 2004 the facts as narrated are also similar to that of the case on hand. The learned Judge, has narrated the facts of the case in paragraph-2 is as follows:

"The petitioner has questioned the impugned order dated 22.11.2000 of the first respondent and the consequential order dated 18.6.2002 of the second respondent in denying the selection and special grade pay scale to the petitioner, to which she is entitled to as per G.O.Ms.No.1105, Education (MU-1(2) Department dated

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22.8.1989. By the impugned orders, the said conferment and correspondingly the salary also were sought to be reduced on the ground that the petitioner had not completed ten years of service as selection grade Craft Teacher with the qualification of S.S.L.C. ……"

By following the abovesaid judgement of the Division Bench, the learned Judge has set aside the order of recovery.

11. There is also one another fact which has to be considered in these cases, that the petitioners have been conferred selection grade based on the abovesaid Government Orders even in the year 1990 and have been paid salary and the recovery is sought to be made nearly after nine years without giving any opportunity to the petitioners. Even assuming otherwise, these are not cases wherein by the positive conduct of the petitioners they have acquired certain benefits illegally. On the other hand, the benefits have been conferred by the authorities based on the two Government Orders. In such circumstances, the impugned orders are vitiated by the violation of the basic principles of natural justice and on the said ground also, the impugned orders are liable to be set aside. In view of the same, the writ petitions are allowed. No costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

Kh

To

1.The Secretary,
State of Tamil Nadu
School Education Department,
Secretariat, Chennai 9.

2. Deputy Director
Samanthapuram,
Audit Department
Tirunelveli 627 002.

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3. Additional Assistant Educational
   Officer, Keelapavoor Range
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   Officer, Tirunelveli 627 002.

5. Director of Elementary Education
   College Road, Chennai 6.

6. Account Officer (Audit)
School Education Department
Madurai- 625 002.

7. Assistant Educational Officer
Tenkasi Range,
Tenkasi- 627 811
Tirunelveli district.

8. District Educational Officer,
Tenkasi- 627 811

1 cc to Government Pleader, sr. 56199

WP.NOS.18520 TO 18522 OF 1999

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